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Legal Division

September 8, 1997

Federal Communications Commission
Chief Enforcement Division Common Carrier Bureau - Stop 1600A
Room 6008
2025 M Street, N.W.
Washington, DC 20554

Federal Express

Re: Comment
CC Docket No. 96-128

Dear Sirs:

Please accept for filing in CC Docket No. 96-128 the enclosed two copies the Reply Comment of Telaleasing Enterprises, Inc.

Sincerely,

Theodore C. Rammelkamp, Jr.
Senior Vice President & General Counsel

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	CC Docket No. 96-128
Implementation of the	)	
Pay Telephone Reclassification	)	
and Compensation Provisions of the	)	
Telecommunications Act of 1996	)	

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REPLY COMMENTS OF TELALEASING ENTERPRISES, INC.
ON REMAND ISSUES

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REPLY COMMENTS OF TELALEASING ENTERPRISES, INC. ON REMAND ISSUES

I. INTRODUCTION.

Telaleasing Enterprises, Inc. submits these Reply Comments in response to the *Public Notice*[1] issued by the Commission on August 5, 1997 seeking comment to supplement the record on issues remanded to the Commission on July 1, 1997 by the United States Court of Appeals for the District of Columbia Circuit ("the Court") in *Illinois Public Telcom.*[2] Telaleasing Enterprises, Inc. ("TEI") is a wholly owned subsidiary of Davel Communications Group, Inc. (Nasdaq "DAVL"). TEI is a private payphone owner and payphone service provider ("PSP"). TEI, one of the largest PSP's in the United States, owns and operates approximately 18,800 payphones located in 30 states and the District of Columbia.

[1] Pleading Cycle Established For Comment on Remand Issues in the Payphone Proceeding, *Public Notice*, DA 97-1673 (rel. Aug. 5, 1997) (*Public Notice*).

[2] *Illinois Public Telecommunications Ass'n v. FCC*, Docket 96-1394, slip op. (D.C. Circuit, July 1, 1997) (*Illinois Public Telcom*).

II. SUMMARY OF POSITION.

Based on the data in this proceeding, the Commission should provide for default, per call compensation at the cost based market surrogate referenced to the local, coin deregulated rate of 35¢ because the underlying costs of all calls originating from a payphone are similar. Any adjustments for avoided or additional costs determined by call type are *de minimus* and, in any event, the deregulated market is a more reliable measure of these costs than the comments in this proceeding. Interim, flat-rate compensation should be increased, retroactive to November 7, 1996 to reflect the correct number (157) of average dial around calls per month per phone for the flat-rate period. Based on the clear intention of many of the carriers to flout the Commission's Orders the Commission should provide penalties and costs to assist the PSPs in collecting delinquent dial-around compensation. Telaleasing looks forward to the full and fair compensation which will be provided when compensation is based on a per call basis; however, the Commission should delay implementation of the more difficult to oversee per-call compensation until such time as the Commission is satisfied that the Carriers are meeting their flat-rate, interim obligation. No modification of interim compensation, should result in the PSPs not being compensated for each and every call since November 7, 1996.

III. ADDITIONAL AND AVOIDED COSTS.

A. *The avoided costs to the PSPs of originating dial-around calls versus local coin calls.* The Cost Data Submitted by the major PSPs and the RBOC Coalition provide the Commission with consistent factual data to fulfill the mandate of the remand in *Illinois Public Telcom*. The RBOC Coalition[3] determined that there were 2¢ in avoided local service charges on a dial-around call and 2¢ in avoided coin collection costs on the same call.[4] The cost data of Peoples Telephone Company suggested that a dial-around call avoided total costs of 6¢, of which Peoples attributed 4¢ to local service charges and 2¢ to coin collection and servicing.[5] Communications Central, Inc. found avoided costs on the dial-around call of 2¢ attributable to local service charges and 1¢ to collection and servicing.[6] Telaleasing found avoided costs of 1.06¢, consisting of collection and servicing of .83¢,

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[3] *Comments of the RBOC/GTE/SNET Payphone Coalition on Remand Issues. (RBOC Comment).*

[4] Id. p. 19.

[5] *Comments of Peoples Telephone Company, Inc. on Remand Issues (Peoples Comment)*, p. 14.

[6] *Comments of Communications Central, Inc. on Remand Issues (CCI Comment)*, p. 9.

maintenance costs of .08¢ and excise taxes of .15¢.[7] The American Public Communications Council (APCC) cited avoided costs of approximately 6¢, 3¢ attributable to local service charges and 3¢ to collection and servicing.[8] These avoided costs are summarized as follows:

	Peoples	*CCI*	*Telaleasing*	*APCC*	*RBOCs*
Local Service	4¢	2¢	0¢	3¢	2¢
Coin Related	2¢	1¢	.91¢	3¢	2¢
Excise Taxes	0¢	0¢	.15¢	0¢	0¢
Total	6¢	3¢	1.06¢	6¢	4¢

Telaleasing attributes its substantially lower avoided costs primarily to the fact that it assigned no such costs to local service. Telaleasing set forth in its Comments why the cost of local service is not an avoided cost, or at least is a *de minimus* avoided cost, and urges the Commission to refrain from treating the cost of local service as an avoided cost on a dial-around call. As Telaleasing observed in its Comment[9], the trend in recent years has been away from measured service due to costs. Over 90% of Telaleasing's payphones currently subscribe to flat-rate services. Of the eight companies making up the RBOC Coalition, six use flat-rated lines.[10] Further, many of the measured service tariffs contain a significant element of flat-rate charges, *e.g.* adding only incremental usage charges for calls above a specified number. Finally, subscription to local service is a *sine qua non* for provision of payphone services as a practical matter in all jurisdictions and as a matter of regulation in some such as North Carolina which requires that "All PTAS instruments . . . must be connected to the telephone network through PTAS lines furnished by the local exchange company.[11]"

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[7] *Comments of Telaleasing Enterprises, Inc. on Remand Issues.* (*Telaleasing Comment*), p.9.

[8] *Comments of the American Public Communications Council on Remand Issues.* (*APCC Comment*), pp. 13, 14.

[9] *Telaleasing Comment*, p.5, fn.15.

[10] *RBOC Comment*, p. 16.

[11] *NC Utilities Commission Rule R13-2(a)*

B. *The additional costs to the PSPs of originating dial-around calls versus local coin calls.* As many of the Comments pointed out, if it is appropriate, as the Court suggests, to decrement the amount of per call compensation for avoided costs, it is likewise appropriate to increment such compensation for additional costs attributable to dial-around calls. As suggested in its Comment, Telaleasing concurs with this view, but has been unable to precisely quantify these costs.[12]

The RBOC Coalition notes that that the cost of the ANI *ii* digit identifier system, used to identify payphone lines eligible for dial-around compensation, is a charge that will be built into the LEC tariffs and thus is an identifiable, additional cost.[13] This unbundling of the LEC tariff to attempt to identify unique costs is similar to the view of the IXCs and noted by the Court[14] that the element of call termination imbedded in the LEC bill should be treated as an additional cost of a local coin call. For the reasons stated above, Telaleasing believes the LEC bill is properly allocable to all calls and it is inappropriate to pro rate the LEC bill disproportionately among call types; however, if the Commission rejects Telaleasing's view and unbundles the LEC bill for this purpose, it should consider the additional costs as well as the avoided costs.

Several of the Comments cite the time value of money as an additional cost. Even when timely paid, the exception rather than the rule, there is a three month minimum and six month maximum delay in payment of compensation for a dial-around call. The typical cycle for collection of the coin attributable to a coin call is a maximum of two weeks and a minimum of zero days. Assuming the 35¢ compensation rate and using the cost of capital rate of 9% assumed by Telaleasing in its Comment,[15] the longer time to collect dial-around compensation adds about 1.11¢ per such call.[16] The other factor involved in adjustment for the time value of money is the

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[12] *Telaleasing Comment*, ¶IV-A-4-g, p.9.

[13] *RBOC Comment*, pp. 17-18.

[14] *Illinois Public Telcom*, p.14.

[15] *Telaleasing Comment*, p.9.

[16] The average number of days for collection of dial-around compensation is 135 (90 minimum, 180 maximum). The average number of days for collection of a coin call is 7 (0 minimum, 14 maximum). Dial-around calls on average take 128 days longer (135-7) to collect than coin calls. One hundred twenty-eight days is 35% of a year (128/365). Thirty-five percent of 9% is 3.15%, 3.15% of 35¢ is 1.1¢ See also *Peoples Comment*, p.14.

egregious late payment by the IXCs.[17] This later problem could be solved by the Commission imposing interest at a stated rate on late payments. Telaleasing suggests that this rate be high enough to have a punitive element to encourage timely payment. This extraordinary measure is justified because the IXCs have flagrantly ignored the orders of this Commission to make timely payment of interim compensation even before the ruling in Illinois Public Telcom. Further, Telaleasing anticipates that the problem of delayed payment will become increasingly burdensome if and when per call compensation is implemented. In many cases the carriers will hold all of the records to establish the amount of per call compensation and will likely make it difficult, at best, for PSPs, especially those without the resources of the few large PSPs, to collect. Interest high enough to be punitive plus a rule by the Commission to allow PSPs to recover the costs of collection, including attorney fees, would do much to level this playing field. Imposing interest and collection costs on delinquent IXCs would also alleviate the problem of collection of small accounts. Under the current TOSCIA system it has just not been efficient to collect from carriers with very small obligations. This could well be exacerbated if the Commission imposes the obligation for interim compensation on a wider base of carriers. Peoples Telephone notes that the current uncollectible amount on TOSCIA dial-around compensation runs at about 8%.[18] If the Commission fails to provide some collection tools for the PSPs or to otherwise enforce its Orders, then 8% (3¢ on a 35¢ call) should be an added cost to a dial-around call.

There are other additional costs incurred because of dial-around calls including the anticipated need to track calls on a per-call basis, the implementation of the 888-XXX-XXXX dialing pattern to accommodate the proliferation of subscriber 800 numbers and the increased infrastructure required to audit collection of compensation. The smaller PSPs will be required to either upgrade equipment to provide per-call tracking of all calls or out source this service at a cost now being quoted by some LECs at up to 10¢ a call. However, these costs are just as difficult to associate with a particular type of call as are many of the other costs of maintaining a pay phone in the field.

C. *Summary of Additional and Avoided Costs.* Telaleasing recommends not attempting to unbundle the LEC bill for the purpose of finding avoided costs or

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[17] Of the 24 IXCs obligated for interim compensation 13 did not pay TEI their fourth quarter 1996 obligation and these 13 were joined by 4 more in refusing to pay the 1997 first quarter obligation in spite of demand by TEI for payment. *Telaleasing Comment*, p.12.

[18] *Peoples Comment*, p.5.

additional costs associated with a dial-around call, but if it is done for either purpose, it must be done for both. Second, utilizing the average costs associated with coin and servicing cited in the above Table at ¶ III-A, there is an avoided cost of 1.78¢ associated with a dial-around call.[19] ; There is an additional cost imposed for the time value of money of about 3.15% of the per call amount finally determined (1.1¢ of a 35¢ call). Third, if the Commission does not provide some enforcement mechanism for collection another 8% of the per call amount finally determined (2.8¢ of a 35¢ call) should be treated as an added cost of a dial-around call. Under this view, there are avoided costs of 1.78¢ and additional costs of 1.1¢ provided the Commission provides an effective enforcement mechanism for its Order.

IV. METHODS OF DETERMINING APPROPRIATE COMPENSATION.

A. *Market-based Cost Surrogate Preferable.* Telaleasing believes that the Commission's original approach of using a market-based rate as the surrogate to determine payphone cost is correct and should be maintained. The Commission stated at ¶ 70 of its Payphone Order that the ". . .deregulated local coin rates are the best available surrogates for payphone costs and are superior to the cost surrogate data provided by the commenters."[20] The Commission's determination to use a market-based proxy for payphone costs was not questioned by the Court and should not be abandoned at this point. As the RBOC Comment states "it would be particularly difficult to rationalize the wide divergence of existing cost structures - for RBOCs, PSPs, independent PSPs and carriers such as AT&T - into a single, cost based rate."[21] The soundness of the decision to avoid accounting-based determination of these costs is further demonstrated by the cost data submitted by the major PSPs which, although reconcilable, cite a wide range of costs per call for all calls. Peoples suggests 42¢ a call, the APCC is at 41¢ a call, CCI at 37¢ and Telaleasing determines its cost per call to be 30¢. Unlike the other PSP commenters, Telaleasing did not include income taxes and a reasonable rate of return on invested capital in its original submission which, if done on the same basis as the other PSPs would increase its cost per call to 35¢ per call; however, the observation that it would be difficult to impose a TELRIC-like costing standard on independent PSPs who have not had previous experience with costing systems is

[19] Arguably in a market referenced compensation system the lowest cost (most efficient operator) should be used.

[20] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996* (CC Docket No. 96-128), FCC 96-388 (rel. Sept. 20, 1996) (*Payphone Order*), recon., FCC 96-439 (rel. Nov. 8, 1996) (*Reconsideration*).

[21] *RBOC Comment*, p.29.

borne out by this divergence and is as true today as when made by the Commission in 1992.[22] The determination of which costs and to what extent are allocable to a given type of call further demonstrates the Commission's wisdom in relying on a market-based, cost surrogate. Unremarkably, the PSPs and the RBOC Coalition are not far apart on these costs and the allocation thereof, advocating an allocation of avoided costs to local coin calls of from 3¢ to 6¢ for those PSPs allocating local network cost.[23] See the Table at ¶IV-A, supra. However, MCI states that the correct cost is 17¢ based on a state proceeding in Massachusetts,[24] as does Sprint.[25] On cursory examination of the Sprint synopsis of this proceeding it is impossible to determine what is included in this cost structure. It most likely ignores the fact that the subject phones are dumb LEC phones with a very low basis for depreciation. AT&T persists in asking the Commission to utilize incremental or marginal costs in determining the cost of a dial-around call which proposal has been repeatedly dismissed as unfair and unreasonable. In short, the wide range of costs evidenced by the comments in this proceeding, should reinforce the Commission in its view that a market-based surrogate is the best vehicle for ascertaining these costs. Further, the analysis of the PSPs, even though somewhat divergent, generally supports the proposition that a cost analysis would result in something close to the presently determined deregulated market-based rate of 35¢ for the most efficient operators.

B. *True Market-Based Compensation.* If the Commission chooses to abandon a market-based cost surrogate, it should choose a true market-based surrogate for the types of calls being compensated, to wit: access and subscriber calls. As the well researched and documented RBOC Coalition comment describes, commissions paid to PSPs on 0+ calls which are a true surrogate for access code calls range from $0.90 to $1.33 per call (36% to 54% of gross call revenue). If the same commission rate is assumed for subscriber calls which produce an average gross call revenue of $0.50 per call the commission should be $0.18 to $0.27 per call. Using the RBOC data that subscriber calls outnumber access code calls by 2-to-1, this results in a blended rate for all dial-around calls of from $0.43 to $.063 per call.[26] This solution

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[22] Second Report and Order, *Policies and Rules Concerning Operator Services and Pay Telephone Compensation*, 7 FCC Rcd, 3251 at 3255-56, ¶32 (1992).

[23] Telaleasing, as set forth previously, does not advocate the allocation of any local network cost to avoided costs on a dial-around call. This difference of views on the allocation of this cost further reinforces the wisdom of a market-based cost surrogate.

[24] *Comment of MCI on Remand Issues (MCI Comment)*, p. 5.

[25] *Comments of Sprint Corporation on Remand Issues (Sprint Comment)*, p.8.

[26] *RBOC Coalition*, p.26.

is not apt to function as well in a per call compensation environment due to the inability of the PSPs to distinguish readily between 800 access and 800 subscriber calls.

C. *Widespread Deployment of Payphones.* A stated purpose of the Act is "to promote the widespread deployment of payphone services to the benefit of the general public. . ."[27] which will be defeated if the compensation for dial-around calls is set below the local coin rate. The RBOC Coalition estimates that at even the 35¢ level of per-call compensation, as many as 20% of payphones are at risk of being removed and that each penny below that level will result in the removal of thousands more.[28]

V. INTERIM COMPENSATION

A. *Number of Calls.* Regardless of what it determines the correct default rate to be, the Commission should revise interim compensation to reflect the superior data now available concerning the number of dial-around calls on PSP equipment. When the Commission issued its Payphone Order on September 9, 1996 it determined that the number of compensable dial-around calls was an average of 131 per month. That determination was made based on historical data provided by the PSPs for periods prior to the period covered by interim compensation.[29] In this proceeding, the PSPs report an increased number of dial-around calls for periods more closely corresponding to the interim compensation period. Telaleasing has recent sample data which reveals an average of 163 such calls per phone per month.[30] The APCC reports 152 such calls in its comprehensive SMDR study for the last 11 months of 1996.[31] Peoples Telephone reports 139 for the six months February through July, 1997.[32] CCI reports 157 calls for its fiscal year ending June 30, 1997.[33] Because of the longer duration of the APCC study, the close correlation with the CCI study and the closer correspondence of those two studies with the interim compensation period, Telaleasing believes it is both fair and conservative to set the number of

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[27] 47 U.S.C. § 276(b)(1).

[28] *RBOC Coalition*, p.24.

[29] *Payphone Order*, ¶125.

[30] *Telaleasing Comment*, p.2.

[31] *APCC Comment*, p.18.

[32] *Peoples Comment*, p.6.

[33] *CCI Comment*, p. 8.

compensable dial-around calls at 157 per month. If the period of flat-rate compensation is extended, as suggested below, the Commission should provide for periodic modification of the flat rate amount based on the actual experience of the PSPs.

B. *Adjustments to Interim Compensation.* As a preliminary matter, Telaleasing disputes the assertion of Sprint's comment that there is nothing in the statute which required the Commission to implement payphone compensation by any particular date.[34] While not specifying a starting date for compensation explicitly, the Telecommunications Act of 1996 states that ". . . **within 9 months of the date of enactment** of the Telecommunications Act of 1996 the Commission shall **take all actions necessary** (including any reconsideration) to prescribe regulations that - (A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone. . ."[35] (emphasis added). Congress clearly addressed the urgency the per call compensation issue has for the PSPs and in the context of the legislative history this statement should be understood as a clear direction to begin compensation no later than in fact the Commission did. If the Commission determines to change the rate of interim compensation it should do so in a fashion that does not relieve the carriers of any obligation to pay for calls occurring after the original effective date of November 7, 1996.

C. *Continuance of flat-rate, interim compensation.* Telaleasing asks the Commission to extend the period of flat-rate, interim compensation until such time as the Commission is satisfied that it will be fairly administered. The additional complexity of the administration of the per-call, second phase of interim compensation, the control of the IXCs over a large portion of the relevant records and the evidenced lack of good faith of many of the IXCs in making even the flat-rate payments dictate the extension of flat-rate compensation to protect the interests of the PSPs.

VI. CONCLUSION

The Commission should provide for default, per call compensation at the local, coin deregulated rate of 35¢ because the underlying costs of all calls originating from a payphone are similar. Interim, flat-rate compensation should be increased, retroactive to November 7, 1996 to reflect 157 dial around calls per month per phone for the flat-rate period with subsequent, periodic adjustment if the flat-rate period is extended. The Commission should provide penalties and costs to assist the PSPs in collecting delinquent dial-around compensation. Further, until such time as

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[34] *Sprint Comment*, p. 12

[35] 47 U.S.C. § 276(b)(1)(A).

the Commission is satisfied that the Carriers are fully meeting their flat-rate, interim obligation, it should delay implementation of computation of compensation on a per-call basis and extend the period of flat-rate compensation. No modification of interim compensation, should result in the PSPs not being compensated for each and every call since November 7, 1996.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I, Theodore C. Rammelkamp, Jr., do hereby certify that on this 8th day of September, 1997 the required number of copies of the foregoing Reply Comments of Telaleasing Enterprises, Inc. were sent by Federal Express, prepaid, to the following:

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